



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/174227

PRELIMINARY RECITALS

Pursuant to a petition filed May 11, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin on June 14, 2016.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to decide the merits of this tax intercept matter.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED] ESS
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County, Wisconsin.

2. The following 2 Claims were established against petitioner for overpayments of FS:
 - (I) Claim Number [REDACTED]; October 1, 2011 to September 30, 2012; \$4,404.00 (current outstanding balance of \$4,397.42); and,
 - (II) Claim Number [REDACTED]; October 1, 2012 to August 31, 2013; \$4,024.00.
3. Petitioner was sent a letter notice from the State of Wisconsin dated February 14, 2014 and entitled *Important Notice About Your State Tax Refund and Credits*; the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted in the total amount of \$8,428.00 to repay the FS overpayments identified in *Findings of Fact* #2, above; the written notice also notified petitioner of her appeal rights, including the 30-day time limit for requesting a Hearing; the written notice was sent to petitioner's last-known address.
4. Petitioner requested a Hearing via telephone on May 11, 2016.

DISCUSSION

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2013-14); See also, Wis. Admin. Code § HA 3.05(3)(b) (February 2013). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the tax intercept notice is dated February 14, 2014. Petitioner's request for a Hearing was not made until May 2016. This is well outside of the allowed 30 days. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

The evidence in the record do this matter is that in June 2013 petitioner moved into a rehab facility in Minnesota. However, she never informed the County of her new address. In the case of a tax intercept all that is required is that the *Important Notice About Your State Tax Refund and Credits* letter notice be sent to the last-known address. Wis. Stat. §§ 49.85(3)(a)intro. & (b)intro. (2013-14). That was done in this case.

It is noted that the underlying overpayments were caused because a member of petitioner's household had income that was not reported. Petitioner does not deny this (although she testified that she did not know about the income). By law all FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2016); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.1 & 7.3.1.9. Therefore, petitioner can be held liable for the FS overpayments and made to repay them even if she did not know about the income.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction to decide the merits of this tax intercept matter.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED and the County may certify the amount of \$8,421.42 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the FS overpayment Claims identified in *Finding of Fact* #2, above.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

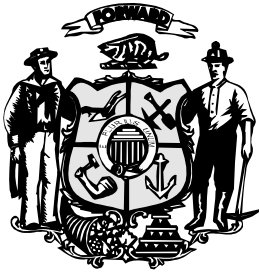
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of June, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 23, 2016.

La Crosse County Department of Human Services
Public Assistance Collection Unit